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RESERCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT
Section 7-9H-1 Through 7-9H-6 NMSA 1978

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TABLE OF CONTENTS

7-9H-1. SHORT TITLE

7-9H-2. DEFINITIONS

7-9H-3. RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT; AMOUNT;
ELIGIBILITY

3.13.6.8 – Equivalent of one full-time employee

7-9H-4. CLAIMING THE CREDIT; CREDIT CLAIM FORMS

7-9H-5. LIMITATION ON OTHER CREDITS

7-9H-6. ADMINISTRATION FO THE ACT

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**7-9H-1. SHORT TITLE.-- Chapter 7, Article 9H NMSA 1978 may be cited as the "Research and Development Small Business Tax Credit Act".
(Laws 2011, Chapter 67, Section 1)**

7-9H-2. DEFINITIONS.--As used in the Research and Development Small Business Tax Credit Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(2) in which substantially all activities constitute elements of a process of experimentation related to new or improved function, performance, reliability or quality, but not related to style, taste, cosmetic or seasonal design factors;

C. "qualified research and development small business" means a business, including a corporation, general partnership, limited partnership, limited liability company, sole proprietorship or other similar entity, that:

(1) employed no more than twenty-five employees on a full-time-equivalent basis in any prior calendar month;

(2) had total revenues of no more than five million dollars (\$5,000,000) in any prior fiscal year;

(3) did not in any prior calendar month have more than fifty percent of its voting securities or other equity interest with the right to designate or elect the board of directors or other governing body of the qualified business owned directly or indirectly by another business; and

(4) has made qualified research expenditures for the period of twelve calendar months ending with the month for which the credit is sought of at least twenty percent of its total expenditures for those twelve calendar months;

D. "qualified research expenditure" means an expenditure directly related to qualified research, but does not include any expenditure on research funded by any grant, contract or similar mechanism by another person or governmental entity, and does not include any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project or expenditures for which the taxpayer has received any credit pursuant to the Capital Equipment Tax Credit Act, the Investment Credit Act or the Technology Jobs Tax Credit Act; and

E. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or collection and payment of any tax or a person to whom an assessment has been made if the assessment remains unabated or the amount thereof has not been paid.

(Laws 2005, Chapter 104, Section 12)

7-9H-3. RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT--AMOUNT--ELIGIBILITY.--

A. Until June 30, 2015, a taxpayer that is a qualified research and development small business is eligible for a credit in a reporting period in an amount equal to the sum of all gross receipts taxes or fifty percent of withholding taxes paid on behalf of employees and owners with no more than five percent ownership that are due to the state or payable by the taxpayer with respect to that business for that reporting period. The credit provided in this section may be referred to as the "research and development small business tax credit".

B. A taxpayer is not eligible for the credit with respect to a reporting period month:

(1) before July 2005 or between July 1, 2009 and June 30, 2011;
(2) that is more than thirty-five consecutive calendar months after the first month for which a claim for the credit is made by the taxpayer or by a person to whom the taxpayer is a successor, pursuant to Section 7-1-61 NMSA 1978. The time period between July 1, 2009 through June 30, 2011 shall be excluded from a determination of consecutive calendar months;

(3) after which the qualified research and development small business employs more than twenty-five employees on a full-time-equivalent basis;

(4) in a fiscal year of the qualified research and development small business after the first fiscal year in which that business has total revenues in excess of five million dollars (\$5,000,000);

(5) after the calendar month in which more than fifty percent of the qualified research and development small business' voting securities or other equity interests having the right to designate or elect the board of directors or other governing body of that business are owned directly or indirectly by another business;

(6) if the business was not a qualified research and development small business in the twelve-calendar-month period ending with that calendar month;

(7) during which the taxpayer is the beneficiary of an industrial revenue bond issued by a municipality or county; or

(8) during which the taxpayer sold any goods of which the taxpayer is not the manufacturer, unless the taxpayer has received an appropriate nontaxable transaction certificate for such sale or sales.

(Laws 2011, Chapter 67, Section 2)

3.13.6.8 - EQUIVALENT OF ONE FULL-TIME EMPLOYEE

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.6.8 NMAC - N, 5/15/07]

7-9H-4. CLAIMING THE CREDIT--CREDIT CLAIM FORMS.--The taxpayer shall claim the research and development small business tax credit within one year after the end of the reporting period to which the credit is applicable. The department shall provide credit claim forms for the research and development small business tax credit. A credit claim form shall accompany any return in which the taxpayer claims the credit, and the claim shall specify the amount of credit intended to apply to each return.
(Laws 2005, Chapter 104, Section 14)

7-9H-5. LIMITATION ON OTHER CREDITS.--Claiming the research and development small business tax credit with respect to a reporting period renders the taxpayer ineligible to claim a credit with respect to that same reporting period pursuant to the Capital Equipment Tax Credit Act, the Investment Credit Act or the Technology Jobs Tax Credit Act.
(Laws 2005, Chapter 104, Section 15)

7-9H-6. ADMINISTRATION OF THE ACT.--The department shall administer the Research and Development Small Business Tax Credit Act pursuant to the Tax Administration Act.
(Laws 2005, Chapter 104, Section 16)
